

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Rick Weingard

Palm Springs, Ca. 92264

Complainant,

v.

Brian Nestande  
74-478 HWY 111, #112  
Palm Desert, CA 92260

Nestande for Congress  
74-478 HWY 111, #112  
Palm Desert, CA 92260

David Bauer  
74-478 HWY 111, #112  
Palm Desert, CA 92260

Respondents.

MUR # 6773

**COMPLAINT**

The purpose of the Bipartisan Campaign Reform Act of 2002 ("BCRA") was to ensure that "soft money" such as corporate contributions could not be used to fund campaigns for federal office. Brian Nestande, a candidate for Congress in California's Thirty-Sixth Congressional District, has repeatedly violated the letter and spirit of BCRA by using his nonfederal committee for California state office as a shadow campaign to raise and spend soft money in support of his federal candidacy, such as by using nonfederal campaign committee funds to keep high-priced political consultants and lavish trips to Washington, D.C., all off of the federal books.

14044354421

14044354422

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Brian Nestande, Nestande for Congress, and David Bauer, as Treasurer of Nestande for Congress, requesting that the Federal Election Commission investigate these violations of the Federal Election Campaign Act, as described below.

### FACTS

Respondent Brian Nestande is currently a California State Assemblyman in the state's Forty-Second Assembly District. Nestande's most recent state campaign committee was Nestande for Assembly 2012. According to public reports filed with the California Secretary of State's office, Nestande for Assembly 2012 raised \$354,432 in nonfederal funds in 2012, and ended 2012 with over \$125,131 in cash on hand.<sup>1</sup> Nestande for Assembly reported receiving multiple contributions from federally impermissible sources such as corporations. Additionally, Nestande for Assembly 2012 reported receiving contributions from individuals in excess of the federal limits. Nestande formed a second nonfederal committee, Brian Nestande Officeholder Committee, Assembly 2012, on May 15, 2013. That committee has raised an additional \$25,753 in nonfederal funds, including multiple contributions from federally impermissible sources.<sup>2</sup>

Nestande is currently a candidate for Congress in California's Thirty-Sixth Congressional District. Nestande filed a Statement of Candidacy with the Commission on April 18, 2013. Respondent Nestande for Congress is Brian Nestande's principal campaign committee. Nestande for Congress filed its Statement of Organization with the Commission on April 15, 2013. David Bauer is the federal committee's treasurer. Hereinafter, Nestande, Nestande for Congress, and David Bauer shall be referred to collectively as "Respondents."

<sup>1</sup> See <http://cal-access.ss.ca.gov/Campaign/Candidates/Detail.aspx?id=1301731&session=2011>; <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1732926&amendid=0>.

<sup>2</sup> See <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1781929&amendid=0>.

14044354423

Nestande for Assembly 2012 and the Brian Nestande Officeholder Committee, Assembly 2012 reported a high level of campaign activity in the first half of 2013, even though Nestande is not on the ballot in any California election in 2013.<sup>3</sup> Most notably, the nonfederal committees have spent nearly twice as much as Nestande's average nonfederal spending in previous non-election years.<sup>4</sup> Included in the nonfederal committees' \$114,354 of expenditures through June 2013 are:

- Seven disbursements totaling \$13,861 for campaign consulting services, including a \$2,000 disbursement to The Cullen Group, LLC, a political consulting firm based in the Washington, D.C. suburbs never previously engaged by Nestande's nonfederal campaigns
- Three disbursements totaling \$8,293 for voter registration activities
- Four disbursements totaling \$16,649 for radio production and air time costs
- Three disbursements totaling \$2,928 for travel, lodging and meal costs in connection with a trip Nestande took to Washington, D.C, just months before he became a federal candidate.

A review of previous public reports filed by Nestande's nonfederal committees shows the committees did not normally incur these kinds of expenses in years when Nestande did not appear on the ballot. For example, Nestande's \$16,649 in payments for radio production and air time in the months just before Nestande launched his federal campaign is the *first time* his nonfederal committee has ever reported incurring radio expenses in a non-election year. Additionally, the only time Nestande reported an expenditure similar to the \$8,293 worth of voter registration-related payments in the first part of 2013 was a \$994.77 expenditure for a voter list when he first ran for state office in 2008.

<sup>3</sup> See <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1781926&amendid=0>.

<sup>4</sup> Nestande for Assembly 2012's and Brian Nestande Officeholder Committee's \$114,354 in expenditures between January 1, 2013, and June 30, 2013 far outpace the \$69,085 the Nestande's campaign committees spent in the first six months of 2011 and the \$54,245 spent in the first half of 2009. Historical reports for Nestande for Assembly 2012 are available at <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1334108>.

14044354424

Strikingly, Nestande's federal committee reported virtually no expenditures during the period leading up to his decision to run for congress.<sup>5</sup> Nestande for Congress reported only a single \$1,998 disbursement for "printing" during the "testing the waters" period before Nestande's principal campaign committee filed its statement of organization with the Commission. Nor did the federal committee report the nonfederal committees' expenditures as transfers or in-kind contributions.

Additionally, Respondents maintain a campaign website for Nestande's election to Federal office at <http://www.briannestande.com> (hereinafter, the "Website"). According to the disclaimer that appears on the Website, the Website is paid for by Nestande for Congress. For several months after the launch of the website, one of the six main menu options on the Website allowed visitors to view a "Brian Intro" page. Clicking on the "Brian Intro" menu option led visitors to a PDF copy of a campaign mailer that contains the "Nestande for Assembly" logo.<sup>6</sup> According to a disclaimer visible at the top of the mail piece, the material was paid for by the nonfederal committee Nestande for Assembly 2012.<sup>7</sup>

## LEGAL ARGUMENT

The Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002, prohibits federal candidates and officeholders, and entities they establish, maintain, finance, or control, from soliciting, directing, transferring, or spending funds in connection with an election that are outside the federal source restrictions and limits.<sup>8</sup> This restriction applies even before an individual becomes a federal candidate: Commission regulations require that an

<sup>5</sup> See <http://images.nictusa.com/pdf/136/13964504136/13964504136.pdf>.

<sup>6</sup> A screen shot of the Website and a copy of the mailer are attached to this Complaint.

<sup>7</sup> See Attachments.

<sup>8</sup> 2 U.S.C. § 441i(e)(1); 11 C.F.R. §§ 300.61, 300.62.

14044354425

individual testing the waters for a potential federal candidacy similarly may not accept or expend funds from prohibited sources, such as corporations.<sup>9</sup> Moreover Commission rules prohibit candidates from transferring nonfederal campaign funds to a federal committee in order to ensure that federal elections are financed only with permissible "hard money."<sup>10</sup> Thus, any transfer of funds or assets from a candidate's nonfederal campaign committee to his or her principal campaign committee for a federal election is prohibited.<sup>11</sup>

Respondents have violated these provisions. Respondent committee Nestande for Congress reported virtually no activity during the time Nestande would have been considering a run for Congress. Meanwhile, Nestande's nonfederal committees reported spending tens of thousands of dollars to engage campaign consultants, to conduct voter registration activities, and for radio airtime and production costs – right before he declared his federal candidacy. The nonfederal committee also paid American Airlines, Marriott Hotels, and the Capitol Grille, a Washington, D.C. steakhouse, a combined \$2,928 in connection with Nestande's trip to Washington, D.C. This trip – made just months before Nestande formally declared his federal candidacy – stands out in that Nestande has only ever reported two other trips to Washington: one in June 2012, and the other in September 2009.

Because the evidence shows Respondents used nonfederal funds from Nestande's nonfederal accounts to pay for expenses that were seemingly incurred in connection with Nestande's exploration of federal election, the Commission should investigate whether Respondents have solicited, received, or directed funds outside of the federal source restrictions, in violation of 2 U.S.C. § 441i(e), transferred funds in violation of 11 C.F.R. § 110.3(d), and paid

<sup>9</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>10</sup> 11 C.F.R. § 110.3(d); Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344 (Aug. 12, 1992).

<sup>11</sup> 11 C.F.R. §§ 102.6(a)(iv), 110.3(d).

14044354426

for testing-the-waters activity with nonfederal funds in violation of 11 C.F.R. § 100.72(a) and 11 C.F.R. § 100.131(a).<sup>12</sup>

The Act and Commission regulations also require candidate committees to itemize on their FEC reports any in-kind contributions they receive from donors who have contributed more than \$200 in the aggregate for the election cycle.<sup>13</sup> An in-kind contribution includes “anything of value made by any person for the purpose of influencing any election for Federal office.”<sup>14</sup> Normally, funds or other items received solely to test the waters for a potential federal candidacy are not considered contributions.<sup>15</sup> However, once an individual becomes a candidate, all contributions received during the testing the waters period “must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.”<sup>16</sup> If Respondents used Nestande’s nonfederal accounts to subsidize his federal campaign, they violated the act further by failing to report those expenses as contributions or transfers on the federal committee’s disclosure reports.

Finally, the website shows that Nestande for Congress accepted a transfer of an asset – namely, the material that comprised the “Brian Intro” section of the Website – from the nonfederal committee Nestande for Assembly 2012. By accepting the transfer of the valuable nonfederal campaign asset and using it for the benefit of the federal campaign, Respondents have violated 11 C.F.R. § 110.3(d) prohibiting transfers of assets from a nonfederal committee to a federal committee. Moreover, by doing so, Respondents have transferred, spent, and disbursed

---

<sup>12</sup> See 11 C.F.R. § 110.1(b)(6) (in-kind contribution considered to be made on date services are provided). See also Fed. Election Comm’n Adv. Op. No. 1998-18 (applying 11 C.F.R. § 110.1(b)(6) to in-kind contributions made during the testing the waters period.)

<sup>13</sup> 2 U.S.C. § 434(b)(3).

<sup>14</sup> *Id.* § 431(8)(A)(i).

<sup>15</sup> 11 C.F.R. § 100.72(a).

<sup>16</sup> *Id.*

14044354427

funds outside of the federal limits, source restrictions, and reporting requirements in connection with a federal election, in violation of 2 U.S.C. § 441i(e).

Respondents use of the nonfederal committee's resources were not *de minimis*.

Respondents have demonstrated an ongoing pattern of blatantly appropriating nonfederal assets and funds to subsidize Nestande's federal campaign committee. Nestande for Assembly reporting paying direct mail consultants thousands of dollars during the 2012 election cycle to design and distribute literature and mail, demonstrating the value of the nonfederal mail piece improperly transferred to the federal campaign.<sup>17</sup> That mail piece contains three photographs of Nestande, which themselves have a discernible value. Similarly, Respondents have siphoned off tens and perhaps hundreds of thousands of dollars of goods and services paid for with soft money from Nestande's nonfederal campaign to promote his federal candidacy.

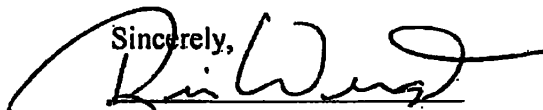
---

<sup>17</sup> A review of California campaign finance records shows that Nestande for Assembly 2012 spent \$59,967 on "campaign literature and mailings." See <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1334108&session=2011&view=expenditures>.

## CONCLUSION

For the reasons described above, we respectfully request the Commission investigate this matter immediately. We respectfully ask that the Commission enjoy Respondents from further violations of the law, and that it fine Respondents the maximum amount permitted by law. Because it represents an ongoing pattern of activity, the Commission should also investigate whether Respondents' violation was knowing and willful.

Sincerely,



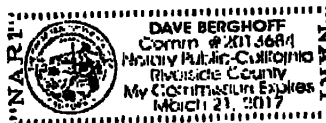
SUBSCRIBED AND SWORN to before me this 10 day of JANUARY, 2014.

Notary Public



My Commission Expires:

3-21-17





"Brian Nestande is a bold, innovative leader and the right choice in the new 42<sup>nd</sup> Assembly District."

**COLONEL PAUL COOK**  
USMC (Retired)



"I appreciate Brian's hard work for our community and his partnership in advocating for public safety."

**STAN SNIFF**  
Riverside County Sheriff



"Brian has shown that he is willing to stand up for what he believes in and I am proud to support him."

**MICHAEL RAMOS**  
San Bernardino County  
District Attorney

He will fight to fully fund our schools, keep our communities safe and restore our business climate to bring jobs back to our area.

**Reforming Government. Protecting Taxpayers. Setting Priorities.**

"Nestande is the kind of knowledgeable, thoughtful and collaborative legislator California needs."

**PRESS-ENTERPRISE**  
October 21, 2012

State government does not work. It spends too much. Wastes too much. Forgets what is important.

Brian Nestande will use his experience as a small business owner to bring tough, common sense reforms and strict accountability to state government.

★★★  
**NESTANDE**  
**for ASSEMBLY**



PAID FOR BY NESTANDE  
FOR ASSEMBLY 2012  
74478 HIGHWAY 111  
SUITE 112  
PALM DESERT, CA 92260

PRSR STD  
U.S. Postage  
PAID  
TMC

*Working to*  
**REFORM Government  
RESTORE our Economy  
and PROTECT Taxpayers**



**BRIAN NESTANDE**

14044354430

